

indicating that no transcript was prepared.

DECISIONS IN FORMAL PROCEEDINGS

SOURCE: 70 FR 11820, Mar. 9, 2005, unless otherwise noted.

§4.240 Decision of the administrative law judge or Indian probate judge and notice thereof.

(a) The administrative law judge or Indian probate judge must decide the issues of fact and law involved in any formal proceedings and must incorporate the following in his or her decision:

(1) In all cases, the names, identifying numbers as assigned by BIA, birth dates, relationships to the decedent, and shares of heirs, with citations to the law of descent and distribution in accordance with which the decision is made, or the fact that the decedent died leaving no legal heirs;

(2) In testate cases, approval or disapproval of the will with construction of its provisions, and the names, identifying numbers as assigned by BIA, and relationships to the testator of all beneficiaries and a description of the property which each is to receive;

(3) Allowance or disallowance of claims against the estate;

(4) Whether heirs or beneficiaries are non-Indian, exclusively alien Indians, or Indians whose property is not subject to Federal supervision; and

(5) A determination of any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs.

(b) When the administrative law judge or Indian probate judge issues a decision, he or she must:

(1) Issue a notice of the decision to all parties who have or claim any interest in the estate; and

(2) Must mail a copy of the notice, together with a copy of the decision, to the Superintendent and to each interested party simultaneously.

(c) The decision will not become final and no distribution may be made thereunder until the expiration of the 60 days allowed for the filing of a petition for rehearing by aggrieved parties as provided in §4.241.

§4.241 Rehearing.

(a) Any person aggrieved by the decision of the administrative law judge or Indian probate judge may, within 60 days after the date on which notice of the decision is mailed to the interested parties, file with the administrative law judge or Indian probate judge a written petition for rehearing.

(1) The petition must:

(i) Be under oath; and

(ii) State specifically and concisely the grounds on which it is based.

(2) If the petition is based on newly-discovered evidence, it must:

(i) Be accompanied by affidavits or declarations of witnesses stating fully what the new testimony is to be; and

(ii) State justifiable reasons for the failure to discover and present that evidence, tendered as new, at the formal hearings held before the issuance of the decision.

(b) The administrative law judge or Indian probate judge, upon receiving a petition for rehearing, must promptly forward a copy to the Superintendent. The Superintendent must not initiate payment of claims or distribute the estate while such petition is pending, unless otherwise directed by the administrative law judge or Indian probate judge.

(c) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the administrative law judge or Indian probate judge will:

(1) Issue an order denying the petition and setting forth his or her reasons therefor; and

(2) Furnish copies of the order to the petitioner, the Superintendent, and the interested parties.

(d) If the petition appears to show merit, the administrative law judge or Indian probate judge must:

(1) Cause copies of the petition and supporting papers to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition;

(2) Allow all persons served a reasonable, specified time in which to submit answers or legal briefs in opposition to the petition; and

(3) Reconsider, with or without a hearing as he or she may determine, the issues raised in the petition; he or

§ 4.242

she may adhere to the former decision, modify or vacate it, or make such further order as is warranted.

(e) Upon entry of a final order, the administrative law judge or Indian probate judge must lodge the complete record relating to the petition with the designated LTRO under § 4.236(b), and furnish a duplicate record thereof to the Superintendent.

(f) Successive petitions for rehearing are not permitted, and except for the issuance of necessary orders nunc pro tunc to correct clerical errors in the decision, the jurisdiction of the administrative law judge or Indian probate judge terminates upon the issuance of a decision finally disposing of a petition for rehearing. Nothing herein prevents the Board from remanding a case for further hearing or rehearing after appeal.

(g) At the time the final decision is entered following the filing of a petition for rehearing, the administrative law judge or Indian probate judge must direct a notice of such action with a copy of the decision to the Superintendent and to the interested parties and must mail the same by regular mail to the said parties at their addresses of record.

(h) No distribution may be made under such order for a period of 75 days following the mailing of a notice of decision pending the filing of a notice of appeal by an aggrieved party as provided in this subpart.

§ 4.242 Reopening.

(a) A person claiming an interest in an estate may file a petition in writing for reopening of the case if he or she:

(1) Had no actual notice of the original proceedings;

(2) Was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted; and

(3) Files the petition within 3 years after the date of a final decision issued by an administrative law judge, Indian probate judge, or the Board, except as provided in §§ 4.203 and 4.206 and paragraph (i) of this section.

(b) The petition must be addressed to the administrative law judge or Indian probate judge and filed at his or her office. The petitioner must also furnish a

43 CFR Subtitle A (10-1-07 Edition)

copy of the petition to the Superintendent. All grounds for the reopening must be set forth fully. If based on alleged errors of fact, all such allegations must be under oath and supported by affidavits.

(c) If the administrative law judge or Indian probate judge finds that proper grounds are not shown, he or she will issue an order denying the petition and giving the reasons for the denial. Copies of the administrative law judge's or Indian probate judge's decision must be mailed to the petitioner, the Superintendent, and to those persons who share in the estate.

(d) If the petition appears to show merit, the administrative law judge or Indian probate judge must cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition.

(1) These persons may resist the petition by filing answers, cross-petitions, or briefs. The filings must be made within the time periods set by the administrative law judge or Indian probate judge.

(2) The administrative law judge or Indian probate judge will then reconsider, with or without a hearing as he or she may determine, prior actions taken in the case and may either adhere to, modify, or vacate the original decision.

(3) Copies of the administrative law judge's or Indian probate judge's decision must be mailed to the petitioner, to all persons who received copies of the petition, and to the Superintendent.

(e) To prevent manifest error, an administrative law judge or Indian probate judge may reopen a case within 3 years from the date of the final decision, after due notice on his or her own motion, or on petition of a BIA officer. Copies of the administrative law judge's or Indian probate judge's decision must be mailed to all interested parties and to the Superintendent.

(f) The administrative law judge or Indian probate judge may suspend distribution of the estate or the income therefrom during the pendency of reopening proceedings by order directed to the Superintendent.